

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1663 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
MINAKSHIBEN D/OJAIRAMDAS SONI

Versus

STATE OF GUJARAT

-----  
Appearance:

Mr.PH Buch for MR PB MAJMUDAR for Petitioners  
Mr KP Raval, Addl PUBLIC PROSECUTOR for Respondent No. 1  
DELETED for Respondent No. 2

-----  
CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 14/02/97

ORAL JUDGEMENT

1. This Criminal Misc. Application is directed against the order of the Judicial Magistrate First Class, Dholka in Criminal Case No.616 of 1990 whereby the learned Magistrate has issued process against the accused petitioner for offence u/s 352, 405, 406 and 114 - IPC.

2. The necessary facts giving rise to the present

Criminal Misc. Application are that :

One Dineshbhai Soni filed a complaint in the Court of Judicial Magistrate First Class, Dholka stating inter alia that he had married with the accused No.1 Minakshiben. She stayed with him for about 20 - 22 days and thereafter, she was being taken away by her father accused No.2 Jairamdas Soni. He was being pressurised to dissolve the marriage by a decree of divorce. He refused to oblige them. It is also alleged that all the accused persons gave beating and threats to him.

3. It is contended by Mr. P.H.Buch, learned counsel appearing for the petitioner that the entire complaint is false and fabricated and the same has been filed with a view to pressurise the applicants to withdraw application filed by the petitioner No.1 Minakshiben for maintenance u/s 125 of the Code of Criminal Procedure, which is pending in the Court of the Judicial Magistrate First Class, at Jambusar. The complainant is a resident of Baroda, whereas the accused persons are resident of Jambusar. The complaint filed by the petitioner No.1 Minakshiben is also pending in the Court of Judicial Magistrate First Class, Jambusar. However, the complaint has been filed at Dholka, which itself indicates that a false complaint has been filed in order to harass and humiliate the petitioners.

4. Learned counsel appearing for the petitioners, relying on a decision in case of State of Haryana vs. Bhajan Lal reported in AIR 1992 SC 604, submitted that the present case falls in the category No.5 as provided in the said judgement.

5. I have heard learned counsel for the petitioners as well as Mr.K.P.Raval, learned APP for the State. Having read the complaint and other circumstances of the case, I have not been able to persuade myself as to what was the occasion for the complainant Dineshbhai Soni to file the said complaint at Dholka. This single fact would suggest that the complainant somehow wants to harass the accused persons and particularly, his wife who had filed an application u/s 125 of the Cr.P.C. for maintenance.

6. Thus, in my view, the facts stated in the complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

7. In view of the aforesaid, this Criminal Misc. Application is allowed. The criminal proceedings being Criminal Case No.616 of 1990 pending in the Court of the Judicial Magistrate First Class, at Dholka against the present petitioners are quashed and set aside. Rule made absolute accordingly.

\*\*\*\*\*

parmar\*